

DATE: January 30, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-07232

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has dual US-Iranian citizenship. He was born in Iran and became a naturalized U.S. citizen in 1994. He has a current Iranian passport. Because the Applicant holds a foreign passport, clearance is denied.

STATEMENT OF THE CASE

On September 21, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item 1) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 26, 2001, the Applicant answered the SOR (Item 3) and elected to have his case decided on the written record, in lieu of a hearing.

On November 16, 2001, the Applicant received a complete copy of the file of relevant material (FORM) dated November 9, 2001, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on December 16, 2001. No response was received. I was assigned the case on January 7, 2002, at which time the record in the case closed. The Department Counsel presented five exhibits (Items).

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C). The Applicant admits the allegations except for SOR subparagraph 1.c., which alleged the Applicant possessed an expired passport. The Applicant had renewed his foreign passport prior to answering the SOR.

The Applicant is 42 years old, has worked for a federal contractor since October 1990, and seeks a security clearance. He was born in Iran and, came to the U.S. in 1978 on a student visa. In 1982, the Applicant applied for political asylum. Although initially denied, asylum was granted. In 1984, he received his B.S. degree from an American U.S. university.

Both of his parents were born in Iran and currently live with him in the U.S. His brother also lives in the U.S. and his sister lives in England. In November 1994, he became a naturalized U.S. citizen. Since that time he has maintained dual citizenship. He has no business interest, property holdings, bank accounts, or close relatives or relationships in Iran.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I) issued guidance clarifying the application of the Foreign Preference adjudicative guideline, hereinafter "ASDC3I memo." In September 2001, a copy of the ASDC3I memo accompanied the SOR. (Item 2, page 3, Enclosures). The Applicant has taken no steps to relinquish his Iranian passport. The Applicant renewed his Iranian passport in 1992 and again at some time between December 2000--when he made a sworn statement (Item 5) and October 26, 2001-- when he answered the SOR. He maintains the foreign passport to allow easier travel should he travel to Iran in the future.

In December 2001, the Applicant stated, ". . . I would not want to give up my Iranian citizenship status, or my Iranian passport for the purpose of obtaining this security clearance." (Item 5, page 2)

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Preference (Guideline C) The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. E2.A3.1.1.

Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.

2. Possession and/or use of a foreign passport. E2.A3.1.2.2.

Conditions that could mitigate security concerns include: E2.A3.1.3.

None Apply.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment,

reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, (Foreign Preference). Under Guideline C, the security eligibility of an applicant is placed into question when the person holds a foreign passport. Some time between December 2000 and October 26, 2001, the Applicant renewed his Iranian passport. There is no evidence the Applicant's possession of the foreign passport was officially approved by the U.S. government.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence issued guidance clarifying the application of the Foreign Preference adjudicative guideline. The ASDC3I memo states any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States government. Although aware of the memo, the Applicant has not surrendered the foreign passport nor received approval from the U.S. government. Application of the ASDC3I memo is dispositive on the issue of Applicant's possession of a foreign passport. I find against the Applicant as to Foreign Preference (Guideline C) SOR subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C (Foreign Preference): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

